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#### **§ 276.1 Purpose.**

This establishes policy guidelines and procedures for Corps of Engineers application of the provisions of section 134a of Pub. L. 94-587.

#### **§ 276.2 Applicability.**

Policies and procedures contained herein apply to all elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

#### **§ 276.3 [Reserved]**

#### **§ 276.4 Legislative provisions.**

Section 134a authorizes and directs institution of a procedure for certification, at the request of local interests, that particular improvements for flood control to be locally constructed can reasonably be expected to be compatible with a specific, potential Federal project under study. Local interests may proceed to construct such certified compatible improvements at local expense with the understanding that such improvements can be expected to be included in the scope of the Federal project, if later authorized, both for the purposes of analyzing the costs and benefits of the project and assessing the local participation in the costs of such project. This legislative authority ceases to be in effect after December 31, 1977.

#### **§ 276.5 Legislative history.**

Discussion of this legislation is contained in the reports by the Senate Committee on Public Works and the House Committee on Public Works and Transportation which accompanied S. 3823, the Water Resources Development Act of 1976 (Pub. L. 94-587). These reports make clear that Congress intended to encourage local communities to assume responsibility and accelerate local cooperation in reducing urban flooding dangers without committing the United States to any future Federal expenditure. The Senate Committee report noted that some communities might be reluctant to undertake compatible local flood control measures for fear that the local work would

jeopardize the potentially favorable cost-benefit ratio of a prospective Federal project. The Act authorizes establishing a procedure for certification of certain local improvements undertaken for the purpose of flood control. Cost assignable to that part of the local improvement that would constitute an integral part of a prospective Federal plan would be eligible to be recommended for credit toward required local cooperation. The Senate Committee report specifically stated that:

\* \* \* This flexibility should in no way be interpreted as a Federal assurance of late approval of any project. While it is in no way a Federal commitment, this provision assures the city that the work it undertakes, once certified, will not be removed from the cost-benefit analysis, and it assures the city that such local work will be credited toward the local costs of cooperation, should the project be later authorized. This will not, however, qualify the community for any cash refunds. If the local costs on such certified work exceed the local share, when later computed, the local government must assume that extra cost. \* \* \*

#### **§ 276.6 General policy.**

(a) This provision will be applied only at locations where a congressionally authorized study is underway or where the study report has been forwarded for Executive Branch review or for consideration by Congress. If a study is underway, the District Engineer must have held the final public meeting and filed a draft EIS with CEQ prior to certification. Certification will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan under study.

(b) Work eligible for certification shall be limited to that part of the local improvement directly related to a flood control purpose.

(c) Only local work commenced after certification shall be eligible for certification except for local engineering work noted below in § 276.6(e). The work proposed for certification must meet the following requirements: The work will be separately useful even if the Federal Government does not authorize and construct the contemplated project; the work to be accomplished

by the non-Federal entity will not create a potential hazard; certification of the proposal will be in the general public interest.

(d) Costs assigned to that part of the local improvement that would constitute an integral part of the prospective recommended Federal plan can be included for credit toward required local cooperation. The amount creditable shall equal the expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers. However, credit will not exceed the amount the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from the local work. Costs of subsequent maintenance will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or Federal funds from other Federal sources, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount. However, there will be no corresponding reduction in the benefits credited for the local improvement.

(e) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those non-Federal engineering costs and overhead costs directly attributable to the creditable part of local work may be included in the amount credited.

#### **§ 276.7 Procedures.**

(a) Non-Federal entities desiring certification credit under the provisions of section 134a of Pub. L. 94-587 should confer with the District Engineer and submit a written application to him. The application will include full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the possible selected Federal Plan and determine what part of the proposed local improvement would be eligible for certification. Prior to certification, the

District Engineer will obtain the concurrence—through the Division Engineer and the Chief of Engineers—of the Assistant Secretary of the Army (Civil Works) by forwarding a copy of the draft survey report and providing information on:

(1) Coordination with local interests including results of public meetings and circulation of the draft EIS.

(2) Basis for concluding the local plan is appropriate in relation to the prospective Federal plan.

(3) Total estimated cost of creditable work.

(4) The urgency for proceeding with the local plan.

(c) The District Engineer shall reply by letter stating to the local applicant what local work and costs can reasonably be expected to be creditable under the provisions of section 134a. This letter shall be the certification contemplated under section 134a. The certification shall include the following conditions:

(1) Issuance of certification shall not be interpreted as a Federal assurance regarding later approval of any project nor shall it commit the United States to any type of reimbursement if a Federal project is not undertaken.

(2) Issuance of the certification does not eliminate the need for compliance with other Federal, State, and local requirements, including any requirements for permits, Environmental Impact Statements, etc.

(3) If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(4) Certification shall expire 3 years after the date of certification if the non-Federal entity has not commenced the work contemplated by the certification.

(d) The non-Federal entity will notify the District Engineer when work commences. The District Engineer will conduct periodic and final inspections. Upon completion of local work, local interests shall provide the District Engineer details of the work accomplished and the actual costs directly associated therewith. The District Engineer shall audit claimed costs to a